Development (1938) Department.

MIS SERIES.

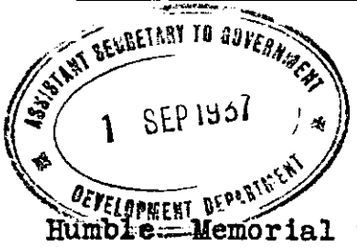
G.O. No. 2405

DATED 27. 9. 38.

[Despatch Abstract.]

Co-operative Societies:-

Petition - Sri U.Gopala Nayak, Member of the South Kanara Government Servants' Co-operative Society - Decision - Arbitration claim No.118/36-37 — Ordered passed.



Dev. 1811-V
1-9-37

Humble Memorial to the Local Government, M a d r a s .

Between

U. Gopala Nayak. ... Memorialist.

and

1.P. Shankaranarayana Rao.)
2.U. Laxmana Nayak.)
3.A. Subraya Hegde.)
4.S. Ramakrishna Kamath.) Respondents.
5.M. Govindachari.)
6.M. Vadiraja.)
7.M. Chinnaya.)
8.A. V. Fernandes.)
9.K. Raghunatha Pai.)

Memorial under Sec. 57 of the Madras Co-operative Societies Act, Act VI of 1932.

Most respectfully showeth :-

1. Memorialist is one of the Directors elected in the annual General Body meeting of the South Kanara Government Servant's Co-operative Society Ltd.,No. 2682 held in --- September 1935 and the address for service of the memorialist is Sheristedar of Sub Court, South Kanara, Mangalore.

2. Respondents are directors elected in the Extra - ordinary General Body meeting of the Society held on 14-1-1936. The 1st. respondent was the President and the Sheristedar, District Court, South Kanara. 2nd respondent was the Secretary and is a clerk in the District Registrar's Office, Mangalore; 3rd, respondent the President is a clerk in the Collector's Office, Mangalore; 4th respondent was the Head-accountant, Collector's Office, Mangalore. 5th respondent is a clerk in the Collector's Office,Mangalore; 6th respondent is a clerk

in the Taluk Office, Mangalore; 7th respondent is the Copying Superintendent, District Court, Mangalore; 8th respondent is the Post-master, Mangalore and the 9th respondent, the Secretary is a clerk in the Post Office, Kodialbail.

3. The memorialist begs to file this memorial for -- revising the order of the Joint Registrar, dated 3-3-1937 in reference No. F 506/1937 on his file declining to interfere in the matter referred to in his petition dated 14-1-1937. (Order enclosed.)

4. The order of the Joint Registrar is contrary to law, justice, equity and good-conscience and the probabilities of the case.

5. The memorialist was one of the directors of the South Kanara Government Servant's Co-operative Society Ltd. No. 2682 elected in the annual General Body meeting held on 29th September 1935, when the said body elected the Board of Directors; A few days after the said election, 9th respondent who was a -- candidate for the directorship, but was defeated, filed a petition to the Deputy Registrar to set aside the election on the ground that there was no quorum. The Deputy Registrar on enquiry rejected the application as groundless.

6. Thereupon a body of more than 15 members requisitioned the General Body meeting to be called for the purpose of holding another election of the Board of Directors. In pursuance of this requisition a General Body meeting was held on 14-1-1936 under the rule 32 of the by-law, and as the President was absent, one Mr. Ramachandra Pai a cousin of the 3rd respondent was proposed to the chair. The said chairman was wholely unfit to conduct the proceedings of the day as he was short tempered, impatient, impertinent and also entirely ignorant of the --

procedure to be adopted in the circumstances of the case. The proceedings were vitiated by several material irregularities and illegalities such as follows:-

(1) The chairman ought not to have proceeded to the business of the re-election before removing the old-body of directors under rule 20 of the by-law. There was no proposal for removal and consequently there was no resolution to that effect.

(2) The Deputy Registrar who was present while explaining at the request of the chairman, about his orders given to the Society and to the 9th respondent, on his petition for setting aside the election of 29-9-1935 protested against the proceedure along with some other members. Thereupon the 3rd. respondent who was engineering the whole affair after resigning his directorship immediately after the election of 29-9-1935 in which his friend the 9th respondent did not come out successful said to the Deputy Registrar in particular, " Your suggestion is premature and uncalled for" and questioned the authority under which he can talk.

(3) The chairman did not give the ruling, but proceeded with the business. Then one Mr. V. S. Pilley, clerk in the Post Office brought a proposal under by-law 20 to the effect that the old body should not be removed and it was seconded by Mr. K. Sanjeeva Bhat, District Board Educational Officer. But the chairman over-ruled the objection without any reason and did not even record the proposal in the minute book.

(4) The proceedure adopted in holding the re-election is grossly irregular and illegal. The chairman did not allow the proposal of the names of all intending candidates and nomination was incomplete. It was also not closed. He did not give an opportunity to a candidate to announce the nomination. He has allowed the nomination of disqualified candidate without scrutiny. Consequently the 5th respondent who was a

disqualified member under by-law 24 being a defaulter for more than 3 months was elected. This could have been --- prevented by proper scrutiny and the result is the perpe - -tuation of irregularity.

8. Before the closing of the nomination Mr. S. N. Gadiyar, member of the Civil Department proposed and Mr. - Appa Prabhu another member of the civil department seconded the proposal; but this was very improperly and summarily disallowed by the chairman without making any note of it. A further proposal duly seconded was made to declare the election void. But this was also overruled and the chairman in doing so lost temper and in the angry mood used very offensive language such as nonsense & etc.

9. The proceedings are further vitiated by the fact that in the utter chaos and confusion that followed, the result of the meeting of the election was not properly announced. The other items in the agenda could not be taken up. On the other hand the memorialist is surprised to find that the text of the resolution contains the words "In place of the old body". If there was a proper resolution for removal this portion is quite un-necessary. In fact this was added without a resolution.

10. Thereupon a monster petition filed by over 100 persons was submitted to the President of the Society praying amoung other things, for convening a General Body meeting to resolve that the election held on 14-1-1936 was invalid, ultra vires and also unnecessary.

11. As the sole trouble was traced to the combination of the members of the Civil Judicial department with those of the Revenue department, the petitioners referred to above prayed in the said petition inter alia for a bifurcation of the Society by opening a separate Society for the Civil department. Members of the civil judicial department filed a separate petition on 15-1-1936 for bifurcation of the Society and for opening a separate Society for them, to the Deputy

Registrar, who forwarded the same to the Secretary of the Society on 24-1-1936 for necessary action.

12. But the Body of Directors failed to convene the General Body meeting as required under Sec. 15 (1) of the Act VI of 1932 and rule 32 of the by-law. But with the ulterior motives forwarded the same to the Registrar, who disposed it of on 4-4-1936 with his remarks and suggestions.

13. In the meanwhile the Deputy Registrar directed the Board of directors to convene the General body meeting, who in pursuance of the said order issued a notice on 30-1-1936 for General Body meeting to declare among other things that the election was unnecessary, ultra vires and illegal. At the instance of the contesting respondents the special general body meeting was not held.

14. Under these circumstances the party aggrieved moved the Deputy Registrar twice on 9-2-1936 and 9-7-1936 -- respectively to convene a general body meeting for the said purpose under Sec. 15 (2) of Act VI of 1932, as the Board of directors failed to hold the general body meeting as per Sec. 15 (1) of the said act, but of no effect.

15. The Board however persistantly declined to convene a general body meeting as requested by the requisitionists as well as in utter disobedience of the orders of the Deputy Registrar, dated 24-1-1936, 1-2-1936, 6-6-1936, 16-6-1936 and 23-7-1936, against the suggestions of the Registrar. In -- addition to this the board of directors directed the petitioners on 26-6-1936 to make a reference under Sec. 51 of the Act VI of 1932 to the Deputy Registrar. Accordingly a reference was filed.

16. Thereupon the requisitionists seeing that the board of directors do not adhere to the rules and by-laws and do not

hold the special general body meeting in spite of the above orders of the ~~Deputy~~ Registrar and the Registrar, moved the Deputy Registrar on 9-7-1936 to convene a special general body meeting under Sec. 15 (2) of Act VI of 1932, but to no effect. Finally as they did not get any redress either from the Society or from the Deputy Registrar the memorialist filed his reference in the interests of the Society, because the very purpose of the existence of the Society will be frustrated if an unsuccessful candidate can even for flimsy reasons throw over-board a -- working body of directors by convening a general body meeting with the help of 15 members.

17. The suit was transfered on 4-8-1936 to Mr. P.R.R.Punja for arbitration who declined the appointment. As the hearing was likely to take some time and as the respondents, board of directors were anxious to function, the memorialist moved the Deputy Registrar by an affidavit to restrain the respondents from functioning, but he dismissed the petition even without issuing notice to the other side.

18. Subsequently the Deputy Registrar transfered the reference to the Sub Deputy Registrar who posted it for disposal for 6-9-1936. As soon as the case was transfered to the Sub Deputy Registrar the memorialist lost all hope of getting justice as the Sub Deputy Registrar among other things is a relation of one of the contesting respondents. The memorialist moved the Deputy Registrar with his petition dated 3-9-1936 for transfer of the reference to some other arbitrator or a body of arbitrators and the Sub Deputy Registrar accordingly adjourned the suit sine die. It is apprehended that this step has prejudiced the Sub Deputy Registrar. He again posted the reference on 15-11-1936 and called upon the memorialist to adduce documentary evidence on 15-11-1936. On that date the Sub Deputy Registrar swore the memorialist for his evidence.

This step is again manifesting prejudice and bias of the Sub Deputy Registrar against the memorialist as he did not know at that stage whether the suit was contested. It is only after the protest and objection of the memorialist on the ground that the defendants had not even filed the Written statement, the Sub Deputy Registrar received the Written -- statement of the defendants and adjourned the case for further hearing on 16-12-1936. The memorialist was directed to file his witness list within a week. The Sub deputy Registrar has shown his bias by directing the defendants to adduce both the documentary and oral evidence on 15-11-1936, but by -- directing the memorialist only to adduce documentary evidence.

19. In obedience to the directions of the Sub deputy Registrar on 15-11-1936 the memorialist filed his witness list. Curiously enough the Sub Deputy Registrar gave notice to the memorialist to appear on 1-12-1936 and purporting to act on the witness list he passed an order declining to summon any of his witnesses and ordered that the chairman of the general body meeting of 14-1-1936 be summoned.

20. The memorialist protested before the Sub Deputy Registrar against summoning the chairman as he was utterly hostile and that he had deliberately omitted his name in the list. The step also clearly shows the ~~vias~~ bias of the Sub Deputy Registrar.

21. The memorialist begs to submit that there was some exchange of words on 15-11-1936 which biased the Sub Deputy Registrar against the memorialist. He submitted that on account of the delay in the disposal of his reference ~~xxxx~~ justice was denied to him because the annual eletion of the Board of Directors by the General Body took place in September last and the very purpose of the suit was defeated. The Sub Deputy Registrar got into temper and said " withdraw your

word, 'justice delayed is justice denied ", but the -- memorialist refused. On the same day the memorialist asked the Sub Deputy Registrar what became of his application for transfer, but he said 'I do not know, you must ask the Deputy Registrar', in an angry mood.

22. The Sub Deputy Registrar seems to have made up his mind with regard to the issues in this case on 1-12-1936. He said " I do not summon your witnesses. No oral evidence is necessary in this case. I will dispose of the case according to the rules and by-laws. You may appeal against my order". But he has actually summoned the hostile witnesses. The - memorialist again moved the Deputy Registrar for a transfer of the reference from the file of the Sub Deputy Registrar on 11-12-1936, but the Deputy Registrar dismissed the application on the flimsy ground that there are many defendants.

23. In these circumstances the suit came on for hearing on 16-12-1936 and the arbitrator purposely refused to allow the memorialist to cross examine the witness on all the - relavant points. The Sub Deputy Registrar said that questioning the witness was a waste of time and declined to reduce into writing the questions put by the memorialist in spite of his repeated request to do so. But after the examination was over at the request of 4th respondent, his relation, he re-examined the witness again. This really shows his bias. The further hearing of the suit was taken up on 19-12-1936 and the -- memorialist again filed a petition to summon his witnesses. The sub Deputy Registrar again declined and dismissed the - petition. The Sub Deputy Registrar did not want even to take his evidence.

24. The judgment of the arbitrator was not at all based on facts. He has not discussed any of the issues raised in the suit.

25. The Deputy Registrar who was present throughout the meeting in question held on 14-1-1936 was not examined. The Sub Deputy Registrar ought to have examined him as court witness. The Sub Deputy Registrar ought to have examined all the witnesses of the memorialist.

26. The decesions of the Sub Deputy Registrar and the Joint Registrar are illegal, improper and irregular. The Sub Deputy Registrar as well as the Joint Registrar ought to have set aside the election of 14-1-1936.

27. On account of the attitudes of the Sub Deputy Registrar and Joint Registrar the following illegalities have resulted.:-

(1) The general body of directors elected on 29-9-1935 were compelled to retire without proper removal under rule 20 of the bye-law.

(2) The 9th defendant a defeated candidate was illegally declared as a director and has now become the Secretary.

(3) The 5th respondent, the defaulter has become a director in contravention to the bye-law 24.

(4) The resolutions passed on 14-1-1936 are grossly unjust, irregular.

(5) The memorialist's grievances were not heard by the authorities below even though he was ready with his evidence to substantiate them.

(6) The whole attempt of the 3rd, respondent was to subvert the Civil Department by gaining a majority for the Revenue department by an unfair means.

(7) With this end in view the business of the Society was transacted in utter disregard for the bye-laws and the Act as detailed above in Paras 12 to 16.

(8) No fair trial was given to the reference No. 118/36-37 by the Sub Deputy Registrar and even biased trial caused abnormal delay.

28. For the above reasons the memorialist prays that the Government in the exercise of the powers under Sec. 57 of Act VI of 1932 may call for the records in reference No. 118/1936-37 on the file of the Sub Deputy Registrar and the connected papers and revise the decisions of the Sub Deputy Registrar and Joint Registrar by setting aside the election of the board of Directors of Society No 2682 held on 14-1-1936 and for directing the board of Directors elected by the general body meeting held on 29-9-1935 should function and grant such other and further reliefs as the Government deems fit to grant under the circumstances of the case.

Mangalore .) K. Gopal Nayak
30th, August, 1937 .) Memorialist.

C.F.:11

PROCEEDINGS / MEMORANDUM OF THE ~~Joint Registrar of Co-operative societies,~~ Madras.

*Post Box No.*_____ *Telegraphic Address*_____

Name ~~M. R. Ry., M. Giriappa Avl., B. A.,~~

No. F.506/37 *dated* ~~dated~~ the 1st March 1937.

Short title Arbitration- South Kanara Government Servants' Co-operative society-Cl.No.118/~~37~~ 36-37 - appeal petition

READ—the following:—

Rad: Petition dated 14-1-37 from Mr. U. Gopal Nayak,
Letter No. F.155/37 dated 5-2-37 from the Deputy Registrar, Mangalore.

- P r o c e e d i n g s .

The petitioner is informed that the Registrar declines to interfere in the matter.

(By order)

A.S. Rajan 3.3.37

K.A/2.3. M a n a g e r.

To the petitioner. 2. Gopal Naik, Sanyasigudde, Anjanaraj Road Mangalore

Copy to the Deputy Registrar, Mangalore.

12

Dev Deepak

pp 1-10 ✓

14/2/24

Ono. 18 II V - From MRRy

U. Gopala Nayak, dt. 30-8-37

dh 24/2

Encl. to 18 II V | 37-1, dt. 22.2.24

Referred to the Regr (GS) for early remarks with connected records.

24/2

Dispatched with enclosures 24/2 (Sec) 21.2.24

To the Regr (GS). (with pahani as pp 1-10 ✓ in orgl to be retd).

Rem 23/4

12

Co-operative **DEPARTMENT.**

GOVERNMENT
25 APR 1938
DEVELOPMENT DEPARTMENT

Received ..... 19 *Registered* Dev 1811-V 1549 19

28·4·38

Subject.

Arbitration - South Kanara Government Servants co-operative society - Claim No. 118/36-37 on the file of the Deputy Registrar of Co-operative Societies Mangalore - appeal to Government.

ENCLOSURES.
No. .....
.....
Spare copies .....

No. F. 1562/38.

Station Chepauk, Madras, *Dated the* 26th A p r i l 19 38.

From (Name) T. Austin Esquire, I. C. S.,

(Designation) Registrar of Co-operative Societies.

To The Secretary to the Government of Madras,

Development Department.
Fort St. George, Madras.

Sir,

Ref:- Dev. endorsement No. 1811-V/37-1 dated 22-2-38.

The appeal petition received with the endorsement quoted is resubmitted with the following remarks.

2. The South Kanara Government Servants co-operative society, Mangalore is a society consisting of only Government servants of several departments like Revenue, Judicial, Postal, Registration etc. For some time past there have been two parties in the society. Some members including the petitioner mostly of the Civil Judicial Department belong to one party, while the other members belonging mostly to the Revenue Department are

leading the other party which is considerably the bigger of the two.

3. On 29-9-35 the annual election to the Board of Directors took place in a general body meeting. In electing the Board of Directors it has been the convention in this society to give a fair chance for representation on the Board to all major departments, the number of directors for each department being fixed roughly in proportion to the number of members from each department. There was however a tie in the case of the representatives of the Postal department and the President gave his casting vote in favour of one of the two contesting candidates. The petitioner was also one of the directors elected at the meeting. A few days after the election, the defeated candidate of the Postal department (9th respondent in the appeal petition) put in a petition to the Deputy Registrar stating that the elections held on 29-9-35 was invalid mentioning among other grounds (1) that there was no quorum when the directors were elected and (2) that the election of directors in batches according to departments was illegal as the procedure was not warranted by the bylaws of the society.

4). On a reference being made to the President of the society who presided at the meeting, he reported that there was full quorum.

5). As regards the other point, since there were no bylaws or subsidiary bylaws fixing the number of seats on the Board to the various departments, the Deputy Registrar advised the society about the desirability of amending the bylaws suitably and electing a new Board after the amendments were registered.

6). In pursuance of a requisition of some members for holding a special general body meeting, a meeting was held on 14-1-36 in which a new Board of Directors was elected without following the old convention of giving representation to the various departments,

but on the general principle of declaring elected the candidate who secured maximum number of votes. At this meeting the petitioner was not elected to the Board.

7). A few days after the election of the new Board, a requisition signed by about 100 members, mostly belonging to the Civil Judicial Department was sent to the society to convene another special general body meeting "to declare that the election of the Board of Directors held on 14-1-36 was unnecessary ultra vires and illegal". The society however delayed to hold the meeting and the petitioner complained to the Deputy Registrar about it. Thereupon the society was asked under sec.15(i) of the Act to convene a general body meeting within one month.

8). The petitioner filed a regular arbitration reference on 31-7-36 to set aside the election of the directors held at the special general body meeting held on 14-1-36 and to declare that the Board of directors elected in the general body meeting on 29-9-35 was the competent body to function. The suit was first transferred to one M.R.Ry. P.K.R. Punja B.A.,B.L., arbitrator for disposal; but he returned it on 14-8-36 saying that he had no time to dispose it of. In the meantime on 12-8-36 the petitioner filed a petition before the Deputy Registrar for grant of an order of injunction restraining the then directors from functioning until disposal of the suit. The petition was dismissed on the ground that there was no such provision either in the Act or the Rules. The grant of such an order would have meant a creation of a serious dead lock in the society's working. The suit was then transferred to the Sub Deputy Registrar for disposal and he posted it for hearing to 6-9-36. Immediately after this transfer, the petitioner applied for the transfer of the suit on the ground that several of the defendants and the arbitrator belonged to the same community. This was

bviously a very flimsy ground. Further the Deputy egistrar's report shows that no suitable arbitrators lso could be found and therefore the Sub Deputy egistrar was asked to proceed with the suit and it as next posted to 15-11-36. On this date the efendants filed written statements and the plaintiff after going through them asked for a month's time to adduce evidence. At the end of this period, the petitioner filed a list of witnesses to be examined. The arbitrator heard him on 1-12-36 and passed an order that the question of summoning the witnesses could be considered after the examination of the chairman of the meeting on 14-1-36, whose evidence was considered important to prove certain material facts in the suit. After examining this witness, the arbitrator ordered that there was no need to examine the witnesses cited by the petitioner. Thereupon the petitioner refused to participate in the proceedings and the suit was consequently dismissed.

9). The main points raised in the petition are

(i) That one of the defendants in the plaint was a relation of the Sub Deputy Registrar and that therefore the petitioner lost all hopes of getting justice as soon as the case was transferred to him (Sub Deputy Registrar).

(ii) That the Sub Deputy Registrar summoned the Chairman of the general body meeting held on 14-1-36 in spite of the petitioner's protest that he should not be examined as he was a hostile witness.

(iii) That the petitioner was not allowed to cross examine the court witness.

(iv) That the Sub Deputy Registrar refused to examine all the witnesses cited by the petitioner.

(v) That the judgment of the arbitrator was not based on facts and that he has not discussed any of the issues raised in the plaint.

10). As regards the first point, the Deputy Registrar has reported that the defendant referred to was elected on both the occasions i.e. on 29-9-35 and 14-1-36 and any decision in the suit would not, therefore, affect his position as a director. The petitioner's fears of obtaining justice on this account were altogether unjustifiable.

11). It is obvious that the chairman who presided at the meeting held on 24-1-36, was one of the most important witnesses for the purpose of proving certain material-facts and the arbitrator rightly summoned him as a court witness although he was neither included as a party to the suit nor cited as a witness, probably with a definite motive. The petitioner could not fetter the arbitrator's discretion in summoning an important witness whose evidence was considered necessary to elicit certain facts relating to the dispute.

12). As regards the allegation that the petitioner was not allowed to cross-examine the court witness, the Deputy Registrar's report shows that he was given full opportunity to examine the court witness on relevant points and that only when the petitioner tried to prolong the examination to the next day by putting irrelevant questions, he was asked to confine himself to the facts of the case.

13). The assertion that the Sub Deputy Registrar ought to have examined all the witnesses cited by the petitioner cannot be accepted. He has the discretion to summon or not to summon particular witnesses according to the circumstances of the case.

14). As regards (v) the petitioner himself is responsible for getting the suit dismissed before recording full evidence. On 19-12-36 the day of last hearing, the petitioner refused to participate in the further proceedings of the suit as a protest against the refusal of the arbitrator to summon the witnesses cited by him. In such circumstances the only go left for the arbitrator was to dismiss the suit. If the petitioner's intention was to

get a decision after a complete trial, he should have behaved differently. When the plaintiff in the suit himself-refused to take part in further proceedings the arbitrator had no other course except to dismiss the suit; and when a suit is dismissed in such circumstances at an incomplete stage there is no scope for discussing the issues.

15). It may thus be seen that from the point of view of the arbitration reference, the petitioner has no cause for complaint. The suit was disposed of in a judicial manner. Since the elections of 14-1-36 which the petitioner wanted to be set aside in his plaint, 2 annual elections to the Board of Directors have taken place. In these circumstances it is not known what kind of relief the petitioner expects to get. Apparently the purpose of his petition is to keep alive the flame of faction in the society. He has been taking an active part in organising agitation which he could easily do with the members of the Civil Judicial Department because of his position as Sheristadar of the Sub-Court, ever since he was defeated at the elections of 14-1-36. The petition therefore does not deserve any consideration.

16). The suit records and this office D.Dis.506/37 are enclosed.

I have the honour to be,
S i r,
Your most obedient servant,

For Registrar. 27/4

S.V.B/27-4-38.

27.4.

Review Petn

Petition under sec: 57 of the Act-
Decision in arbitration claim No 118/57
of South Kanara Govt Servants Coop
Society

To U.S.

Please see the petition under sec:
57 of the Madras Coop: Societies Act, preferred
by Mr. K. Gopala Nayak, a member of
the South Kanara Govt servants Coop:
Society against the decision of S. DR, S. Kanara
in claim No
118/36-57 in the file of the Dy: Reg: South
Kanara. The petitioner had preferred
a petition to the Reg: under sec: 57(5) of the
Act against the decision of the S DR but his
petition was rejected.

2. The history of the case and the
ground for rejection of the decision
~~rejected~~ urged in the appeal are mentioned in
the Regs report at pp 13-18 of. The Reg
for the reasons mentioned in pages 9-14 of his
letter states that there are no grounds of
interference with the decision of the S. DR.
The petitioner is responsible for the dismissal
of the suit. He is the head of the
Directors Court and should have conducted himself

latter in the arbitrator's court. He refused to participate in the proceedings in the court. (p 33, L)
The suit was had therefore to be dismissed, when the examination had not been completed.
The suit was to set aside the election of the Directors of the society held in the general body meeting of 14.1.06 and to direct that the Board of Directors elected at the meeting held on 29.9.05 should function. The suit was postponed on 31.9.06 and annual elections (p 4, ii)
had to take place again on 13.9.06 in the usual course. There was no time to decide the dispute before that date. (X p 25 of P)
A new Board was elected at the annual elections. It is not clear what the object of the petitioner is in preferring appeals and petitions.

3. The notable chief cause of the trouble was the existence of factions in the society. One would expect that a society (p 13 of)
composed of educated govt servants would be able to ~~manage~~ manage their society better. The frequent petitions for calling for general body meetings with a view to cancel the elections previously held show that the members cared more for the success of their own factions. Public servants society ought to set a better example.

4. It is submitted that there do not appear

to be any grounds for interference with the decision of the S.D.R. Subject to order a draft order is submitted for approval.

18.5.38

The petition is long more mischievous than anything else. The petition may be rejected.

18.5.38

9 4 M (1 & L.) Reg Vols are found to be Regd.

I must confess, I am not satisfied with the judicial way in which the Sub-Deputy Registrar - heard the dispute between the parties. I am also surprised, that it should be stated, that because the plaintiff retired from the case no decision on the various issues could be given. It shows that the Sub-Deputy Registrar does not know the ordinary procedure in hearing a case. Whether the plaintiff continues till the end or abruptly walks out it is the duty of a Judge to give a decision on the material and the contentions of the parties before him. I am not also convinced why the Sub Deputy Registrar should have refused the request of the plaintiff for summoning and examining witnesses on his behalf. I can understand, if it is a vexatious request, such as for calling an innumerable number of witnesses. If his request was merely to examine one or two witnesses, it was clearly the duty of the Sub-Deputy Registrar to have examined them. We must be careful not to make applicants for arbitration proceedings feel that they have not been given ample opportunity to produce evidence, while of couse it should not be vexatious. Otherwise, we would have more unholy propagandists doing propaganda against the movement, stating that we are not reasonable. Unless I am in a position to have a proper explanation on the points raised above, I would be inclined to feel that the Sub-Deputy Registrar has not conducted the enquiry in a satisfactory manner.

Dear Deputy

Please see H.M.'s minute on p.5 supra.

2. The Sub-Registrar had before him the plaint, the defendant's written statements and also the evidence of the Chairman of the election meeting. On the facts disclosed by these documents and the evidence, he should have discussed the merits of the suit and disposed it of. He should not have dismissed the suit for the mere reason that the plaintiff refused to participate in the proceedings. He should not have also refused to summon the witnesses whom the plaintiff wanted to be examined unless ~~the~~ he ~~arbitrator~~ had reason to think that the application was not bone fide and was an abuse of the process of court. The Registrar may be requested to inform the Sub-Registrar accordingly and warn him against the repetition of such ~~action~~ irregularities

2. Regarding the merits of the case, the petition to Government relates to the election held in January 1936. Since then two elections had been held and it does not appear necessary to go into the merits of the case and pass orders. The petitioner may be told that the Government ~~do not propose to~~ are precluded from interfering in the matter.

8.9.38

The petition may be rejected as already proposed. AK 9/9/38

10-9-38

HM(I&L) 14/9

14/9

14.9.38

-24-

Dev Dept

To Mg

a draft order is subd for approval.

Mg
24/9

Mg
24/9

ar
26/9

30/2/14

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined..		
When signed ..		
When despatched.		

SUBJECT:— Co-operative Societies

Petition — Sri L. Gopala Nayak, member of the S. Kanara Govt Servants C.S. — Decision arbitration claim No. 118/36-37 — order passed

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO*:—

No. 1811 K/38 From the Sri L. Gopala Nayak, member of S.K. Govt Servants C.S., dated _____ 19____. p. 1

_____ " Sub No. 1871/37 / S 22.2.38 to the Rly C.S. dated _____ 19____. p. 2-4

_____ " from the Rly C.S. No. " A 1582/38 " 26.4.1938. p. 10-15

Ms. / Rout. No. 2405, dated 27-9-1938.

The Govt see no grounds to interfere with the decision of the Sub. Rly C.S.

2. The Govt are not satisfied with the way in which the Sub-Rly disposed of the suit ~~decided the dispute~~. He had before him the plaint, the defendant's written statements and also the evidence of the Chairman taken on 14.1.36 of the general body meeting at which the election took place. On the facts disclosed by these documents and the evidence, he should have dismissed the suit with costs. The Sub-Rly

-26-

was wrong in ~~not dismissing~~ dismissing the suit ~~for the more reason that~~ on the ground that the plaintiff refused to participate in the proceedings. ~~It was not justified in refusing~~ was justified in refusing to summon the witnesses whom the plaintiff wanted to be examined, ~~and he had reason to think that the applica-~~ ~~tion was not bona fide~~ and was ~~an abuse of the process of the court~~. The Rg^r of Cs is requested to inform the Sub Rg^r accordingly and warn him against repetition of such irregularities,

24/9. 26/9

Dpd. by V n Post Messenger
Dpr.'s initials. 28/9
Date 193

Sri M. Gopal Nayak,
member of S. Kanara Local Boards'
Cs,
Head clerk, D^t Munsiff's Court,
Mangalore,
(Para 1 only)

Copy to the Rg^r of Cs with
record.
1) OOs 506/36 (P)
2) Claim No 1187/36-5 (J)
3) CR 1209/36 with OOs (S)
4) OOs 1444/36. (I)

Copy to H (OOs) 's clerk

Routine note

To H.S. –

Please see HH's minute at p 5 ante supra. The asstt Registrar hearing a dispute under sec 57 is not a Court. The Advocate-general has pointed out that the effect of the Madras Coop Societies Act is to pro tanto modify the terms of sec 68 of the Transfer of Property Act and order 34 of the CPC by enabling a society to have recourse to the procedure laid down in secs 47, 57, 57-A in substitution of a suit in a civil court. The Local Govt have framed rules for the procedure in passing of awards by arbitrators different from the ordinary rules of procedure in Courts. It seems necessary to see whether the arbitrator has followed that procedure in this case. The arbitrator after examining the court witness, asked the plaintiff to cross-examine him. Plaintiff wanted time but the arbitrator did not find it necessary to grant his request. The plaintiff then requested that six witnesses to be examined on his behalf. The arbitrator did not consider it necessary to do so and dismissed the suit as the plaintiff refused to participate in further proceedings. The Sub-Registrar could have given time to the plaintiff to examine the court-witness and summoned the witnesses cited by him. His grounds for not doing so are not

very sufficient. The Regr may be requested to obtain the explanation of the official.

A draft circ. note to Legal Dept as regards procedure followed in civil courts when the plaintiff refuses to participate in the proceedings is submd for approval. A draft OM to the Regr will be subd after a reply to the circ. note is received from Legal Dept.

21.7.56

21.7.

Barclay might like to have a look at it. If so, please then put to Legal

23/7

Dev. Dept

U O Note No 1871 Y/32 & 24/7/38

In an arbitration suit under sec: 51 of the Madras Coop: Societies Act 1932, before the Coop: Sub-Reg: arbitrator, the plaintiff cited half a dozen witnesses to be examined on his behalf and requested the arbitrator to summon them. The arbitrator considered that there was no need to examine the witnesses cited by the plaintiff & did not summon them. The plaintiff refused to participate in the proceedings of the suit and said that he would not remain in the court unless the witnesses he cited were summoned. The arbitrator dismissed the suit. Legal Dept may be requested to state whether the procedure adopted in civil courts in similar circumstances, viz whether the judge with pass a decree based on the documentary or the evidence before him or with dismiss the suit.

The arbitrator summoned a witness whom he cross-warned as important but whom the plaintiff did not care to examine him. The plaintiff requested him to cross examine him. The arbitrator did not consider proper the request.

See 2n 1932 243

24.7.

24/7/38

Legal Dept.

Legal Department.

Under Rule 1 of Order XVI in the First Schedule to the Code of Civil Procedure, 1908, a party is entitled to apply to the Court at any time for the issue of summons to persons

4932

ASSISTANT REGISTRAR

25 JUL 1938

whose attendance is required by him to give evidence or produce documents. Such applications are never refused unless the court is satisfied that the application is an abuse of the process of court. It is not ordinarily for the Judge to say that a witness whom the party wants to be called should not be summoned unless there are sufficient materials on which the Judge can say that the request for the issue of summons is not bona fide and is an abuse of the process of court. If an application for summons to witnesses is made in proper time, it is never, as a matter of practice, refused.

If the plaintiff asks for an adjournment of the hearing and his request is not granted and if he then refuses to participate in the proceedings it is open to the civil court to proceed with the trial. If the suit is adjourned to a particular day and if the plaintiff fails to appear, the court will proceed under Order IX, Rule 8, that is to say, if the defendant appears and denies the claim, the suit will be dismissed or if the defendant admits the claim or part thereof, a decree will be passed to the extent the claim is admitted by the defendant.

Legal : 4932-J
17.8.38

ASSISTANT SECRETARY TO GOVERNMENT
17 AUG 1938
DEVELOPMENT DEPARTMENT

21820

Copy of bylaws Nos. 20 and 32 of the South Kanara Government Servants Cooperative society Ltd. No.2682.

Bylaw No.20:- The members of the Board of Directors shall be elected by the general body for a period of one year from among the members. Members of the Board of Directors shall continue in office after the expiry of their term of office, until by election another Board is constituted. A retiring member of the Board of Directors shall be eligible for re-election. After the Board of Directors is elected by the general body, they shall elect from among themselves a President, a Secretary and an Assistant Secretary. Interim vacancies on the Board of Directors may be filled up by the remaining members of the Board by co-option for the unexpired portion of the period except in cases contemplated in bylaw 24. Any member or members of the Board of Directors may at any time be removed by a resolution of the general body.

Bylaw 32:- A meeting of the general body of the members may be convened, whenever necessary, for the conduct of the business by the Board of Directors and shall be so convened by the Board of Directors at the written request of ~~15~~ 50 or more members giving reasons or at the instance of the Registrar or by a member of the governing body of the union to which the society is affiliated when he is specially deputed for the purpose by a resolution of the Governing body of the union.

/True copy/

M. Srinivasa Rao
for Deputy Registrar. 16.3.38.